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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 647

BATES MANUFACTURING COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 9–12) is reported at 19 F. Supp. 526. The opinion of the Circuit Court of Appeals (R. 16–25) is not yet officially reported.

JURISDICTION

The judgment of the court below was entered on December 8, 1937 (R. 25). The petition for writ of certiorari was filed December 24, 1937, and was granted January 31, 1938 (R. 25, 26). The jurisdiction of this Court is invoked under Section 240

(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an action against the United States brought in the United States District Court to recover taxes illegally collected is "begun" within the meaning of Section 3226 of the Revised Statutes, as amended, when a petition is filed with the clerk of the District Court.

STATUTES INVOLVED

The statutes involved are printed in the Appendix *infra*, pp. 21–26.

STATEMENT

This action was brought in the United States District Court for the District of Massachusetts to recover income and profits taxes alleged to have been illegally assessed and collected from the petitioner for the years 1917 to 1921, inclusive, in the aggregate sum of $313,349.71. From the allegations of the petition filed with that court it appears that the taxes in controversy were duly paid; that the Collectors of Internal Revenue who collected such revenue were not in office at the time the petition was filed; and that the claims for refund, upon which the suit is based, were seasonably filed and were rejected by the Commissioner of Internal Revenue on March 22, 1927 (R. 1–6).

The petition upon which this action is based was filed with the clerk of the United States District

Court for the District of Massachusetts on March 21, 1929 (R. 1). On March 25, 1929, a copy of the petition was served by the attorney for the petitioner upon the United States Attorney for the District of Massachusetts (R. 6). On the same day, March 25, 1929, a copy of the petition and notice of its filing were sent by registered mail to the Attorney General of the United States (R. 6–7). On March 28, 1929, an affidavit of service and mailing of the petition and notice was filed with the District Court (R. 6).

On May 16, 1929, the United States, by its attorney, the United States Attorney for the District of Massachusetts, filed an answer denying every material allegation of the petition (R. 7). On January 2, 1932, the petition was dismissed without prejudice for lack of prosecution (R. 7). On May 28, 1935, a bill of review having been filed and allowed, the case was restored to the docket (R. 7). On May 4, 1937, the United States filed a motion to dismiss the petition on the ground that the District Court was without jurisdiction to hear and determine the cause, it being alleged that the action was barred by the provisions of Section 3226 of the Revised Statutes as amended by Section 1113 (a) of the Revenue Act of 1926 (R. 8). On June 18, 1937, the court granted the motion to dismiss (R. 8) and a judgment of dismissal was entered on July 20, 1937 (R. 9). An appeal was taken to the Circuit Court of Appeals for the First Circuit from the order of dismissal

(R. 9, 12–14), and was affirmed by that court in an opinion filed December 8, 1937, one judge dissenting (R. 16–25).

SUMMARY OF ARGUMENT

Suit was not begun by the petitioner within the time permitted by Section 3226 of the Revised Statutes. The action, being brought against the United States in the District Court, was required to be brought in accordance with the provisions of Sections 5 and 6 of the Tucker Act. Although the petition was filed within the time allotted by Section 3226, the requirements of service contained in Section 6 of the Tucker Act were not complied with until after expiration of the period for bringing suit.

Suits against the United States can be maintained only by permission. They must be brought in accordance with the procedure prescribed by statute and subject to all restrictions imposed upon such suits. This alone is sufficient to justify a decision that the provisions prescribed by Sections 5 and 6 of the Tucker Act must be complied with prior to the expiration of the period for bringing suit. Furthermore, the procedure prescribed is intended for the protection and benefit of the United States. This protection cannot be insured unless it is held that an action is not begun against the United States at least until a copy of the petition is served upon the United States Attorney, as required by Section 6 of the Tucker Act. While

there is nothing in the statute itself indicating that service must be made prior to expiration of the statutory period, there is nothing indicating a contrary intention on the part of Congress. In fact, the requirement of service would indicate an intention that service upon the United States Attorney, who is by law under duty to appear and defend the action, would be a prerequisite to the beginning of a suit.

The decisions dealing with the commencement of an action at common law do not support the petitioner's argument that a suit against the United States should be deemed to have been begun with the filing of a petition. The reasoning behind those decisions supports the principle that service upon the United States Attorney must be made prior to expiration of the period for bringing suit.

Furthermore, the principles enunciated in the equity decisions relied upon by the petitioner, as well as in other equity cases, tend rather to support this principle than the argument of the petitioner that the filing of the petition constitutes the commencement of the action.

The fact that the filing of a petition constitutes the commencement of a suit in the Court of Claims for the purposes of the statute of limitations has no application to suits under the Tucker Act in the District Courts where a different procedure is prescribed and actual service is mandatory.

ARGUMENT

SUIT AGAINST THE UNITED STATES WAS NOT "BEGUN" WITHIN THE MEANING OF SECTION 3226 OF THE REVISED STATUTES MERELY BY FILING A PETITION

Section 3226 of the Revised Statutes, as amended, and reenacted in Section 1113 (a) of the Revenue Act of 1926 (U. S. C., Title 26, Section 1672), provides that a suit for the collection of any internal revenue tax alleged to have been erroneously assessed or collected shall be begun within two years after the disallowance of the part of the claim to which the suit relates. The petitioner's claims for refund for the years 1917 to 1921, inclusive, were rejected by the Commissioner of Internal Revenue on March 22, 1927 (R. 15), and accordingly the two-year period expired March 22, 1929. Within that period, and on March 21, 1929, the petitioner filed in the District Court a petition seeking a refund of a portion of the taxes paid for those years. No further steps were taken during the period of limitations, but on March 25, 1929, a copy of the petition was served on the United States Attorney and a copy was sent by registered mail to the Attorney General. An affidavit of service and mailing was filed in the District Court on March 28, 1929.

This action was brought pursuant to the provisions of Section 24 (20) of the Judicial Code, as amended (U. S. C., Title 28, Section 41 (20)), giving the District Courts jurisdiction concurrent with the Court of Claims of suits for refund of taxes erroneously collected in excess of $10,000, if the Collector

is dead or out of office. This provision had its origin in Section 2 of the Tucker Act of March 3, 1887, c. 359, 24 Stat. 505. Section 5 of that Act provides that the plaintiff in a suit against the United States in a District Court *shall* file a duly verified petition with the Clerk. Section 6 provides that the plaintiff *shall* serve a copy of the petition upon the United States Attorney, send a copy to the Attorney General by registered mail, and file with the Clerk an affidavit of such service and mailing; that upon service of a copy of the petition upon the United States Attorney, he shall be under the duty to appear and defend the interests of the Government by a plea, answer, or demurrer within sixty days thereafter, unless the time be extended by order of the court; and that upon his neglect to file a defense, the plaintiff may proceed with the case under such rules as the court may adopt, but not have judgment unless he shall establish his claim by proof satisfactory to the court. It is significant that the provisions relating to the procedure required of the plaintiff are expressly mandatory.

While, for the purposes of this case, it is only necessary to determine whether service on the United States Attorney is necessary to toll the statute, there is support for the proposition that all of the steps required by Sections 5 and 6 of the Tucker Act must be taken before the suit can be deemed to have been "begun" within the meaning of this statute.

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Suits against the United States can only be brought by permission, in the manner and subject to the restrictions imposed (*Reid* v. *United States*, 211 U. S. 529, 538; *Lynch* v. *United States*, 292 U. S. 571, 581–582), and statutes waiving the Government's sovereign immunity against suit are to be strictly construed in favor of the United States. *Nichols* v. *United States*, 7 Wall. 122, 126; *Schillinger* v. *United States*, 155 U. S. 163, 166; *Price* v. *United States*, 174 U. S. 373; *Eastern Transp. Co.* v. *United States*, 272 U. S. 675, 686; *United States* v. *Michel*, 282 U. S. 656, 659.

The Tucker Act, which gave the privilege of suit, has imposed not only the restriction that a petition shall be filed, but also that it shall be served upon the United States Attorney and the Attorney General. These latter requirements, as well as the requirement that a petition shall be filed, are conditions upon the right to sue. No distinction is made between them in the statute; the mere placing of them in different sections does not indicate a difference as to their mandatory character.

In *Bachmann, Emmerich & Co.* v. *United States*, decided June 4, 1935 (S. D. N. Y.), unreported but published in 1935 C. C. H. Vol. 3–A, par. 9427, the District Court held that compliance with all of the steps was required in order to begin the suit and toll the limitations, and in *Munro* v. *United States*, No. 218, Present Term, decided January 31, 1938, while this Court did not specifically decide the

question here involved, in affirming the court below, this Court noted that the provisions of Sections 5 and 6, requiring filing of the petition and service, had not been complied with prior to the running of the statute, and restated the rule that suits against the United States can be maintained only by permission, in the manner prescribed and subject to the restrictions imposed.

We submit that, in any event, it is necessary at least to serve the United States Attorney with a copy of the petition before suit can be deemed to have been begun, and the Court need go no further in deciding the instant case.

While there has been a tendency among the lower courts to hold that the Government may waive its right to insist upon strict compliance with the requirement that a copy of the petition be mailed to the Attorney General and the affidavit of service and mailing be filed, they have uniformly held that service upon the United States Attorney must be made within the time prescribed for bringing suit. *Walton* v. *United States*, 73 F. (2d) 15 (C. C. A. 8th); *Little* v. *United States*, 54 F. (2d) 711 (W. D. La.); *Creasy* v. *United States*, 4 F. Supp. 175 (W. D. Va.); *Creasy* v. *United States*, 20 F. Supp. 280 (W. D. Va.); *Wilhelm* v. *United States*, 18 F. Supp. 600 (M. D. N. C.); *Bachmann, Emmerich & Co.* v. *United States*, decided June 4, 1935 (S. D. N. Y.), unreported but published in 1935 C. C. H. Vol. 3–A, par. 9427; *Irving Trust Co.* v. *United States*, de-

cided October 21, 1935 (S. D. N. Y.), unreported but published in 1935 C. C. H. Vol. 3–A, par. 9600; *Jones* v. *United States,* decided January 14, 1936 (N. D. Ohio), unreported but published in 1936 C. C. H. Vol. 4, par. 9072; *Hostetter* v. *United States,* decided July 29, 1937 (W. D. Pa.), unreported but published in 1937 C. C. H. Vol. 4, par. 9436. Cf. *National Casket Co.* v. *United States,* 263 Fed. 246 (S. D. N. Y.); *Cassarello* v. *United States,* 265 Fed. 326 (M. D. Pa.); *Spencer* v. *United States,* 14 F. Supp. 46 (Mass.).

In conferring jurisdiction upon the district courts concurrent with the Court of Claims to entertain suit against the United States, Congress prescribed procedure which, it is now settled by the *Munro* case, must be strictly followed. The procedure prescribed is totally unlike the procedure to be followed in the usual case of litigation between individuals. The conditions and restrictions imposed upon claimants who seek to assert their rights against the United States in the district courts are intended for the protection of the United States. The requirement that a copy of the petition filed with the court be served upon the United States Attorney is as important and as much for the protection of the United States as is the requirement that a petition be filed containing a statement of the nature of plaintiff's claim, and the facts upon which it is based. While there is nothing in the statute requiring that

service of the petition be made upon the United States Attorney within the time allowed for suit there is nothing indicating a contrary intention on the part of Congress. For that matter, there is nothing in the statute specifically stating when the petition itself shall be filed.

The substance of the petitioner's argument is that the filing of the petition should be treated as the commencement of the suit if the petition is filed with the honest intention of prosecuting the action. We submit that the Court, in construing a statute prescribing the conditions upon which the United States have consented to be sued should avoid any such indefinite test. There is nothing in the statute to justify the petitioner's position, and the petitioner finds it necessary to resort to decisions of state courts applying principles of common law to proceedings of an entirely different nature. It is argued that the substance of the decisions relied upon is that the initial step taken by the plaintiff constitutes the commencement of his action. If these authorities are examined, it will be seen that the initial step which constitutes the beginning of the action is that step taken by the plaintiff which calls into motion the machinery of the court, or other agency for notification to the defendant. No such act is accomplished by the mere filing of a petition in the district court in suits against the United States. The duty of defending actions against the United States is imposed by Section 6 of the Tucker Act upon the United States

Attorney, and it is not until he has been served with a copy of the petition that the United States Attorney is called upon to appear and defend the action.

The first step in a common law action is the "issuance," "purchase," or "suing out" of a writ, and the decisions relied upon by the petitioner (Br. 12–17) hold generally that this step marks the commencement of the action. This was generally held to be true, however, not because it was the first step, but because it was by nature a process which had for its purpose notification to the defendant. This is all that was decided in *Johnson* v. *Smith,* 2 Bur. 950 (K. B. 1758–61). There, a writ of latitat was in fact sued out as the first step. The writ of latitat was held sufficient to commence the action, not because it happened to be the first step taken but because it was a writ to bring the defendant into custody.

In the other cases cited (Br. 13), the reason for holding the "issuance" or "suing out" of the writ to constitute the commencement of the action was not because it was the first step, but because it was a step which served to notify the defendant or bring him into custody, which in the instant case is not performed until the petition is served on the United States Attorney. The discussion in *Farwell* v. *Johnson,* 7 Me. 370, was only *dictum,* because there the writ had been sued out and executed by special attachment within the statutory period. *Randall* v. *Bacon,* 49 Vt. 20, did not even involve the

statute of limitations, but a question of proper tender of a note before commencement of action, and it was there held that service of the writ marked the commencement of the action. The decision in *Brown* v. *Babbington,* 2 Raymond 880 (K. B. 1694–1732), illustrates the point that it is not the first step, irrespective of the nature thereof, which constitutes the commencement of the suit. In that case it was held that the issuing of a writ of "clausum fregit" did not stop the running of the statute, although that of latitat did, because the latter was used "to bring a man into custody." (P. 882.) *Society for Propagating the Gospel* v. *Whitcomb,* 2 N. H. 227, did not involve the commencement of an original action, but involved the proper period for bringing an action of review. The court there held that for the purpose of the statute involved the word "brought" means the procurement of the writ with a view to service upon the opposing party.

It is true, as pointed out by petitioner (Br. 14), that in jurisdictions such as Pennsylvania, where the process is issued by the court itself upon the filing of a praecipe or docketing of the case, the action is deemed commenced when the praecipe is filed. This is because, as pointed out in *Gibson* v. *Pittsburgh Trans. Co.,* 311 Pa. 312, 315, by filing his praecipe for summons "a litigant has set in motion the machinery of the court" which will result in the defendant appearing to defend the action.

It is submitted that procedural steps effective for bringing a defendant into court must be taken before the limitation can be considered to have been tolled, and since the sole means of bringing the United States into court is found in the Tucker Act, the limitation has not been tolled where, as here, the provisions of that Act with respect to service have not been complied with in time.

It has been generally held that the statute of limitations is not tolled unless procedural steps have been taken which are legally effective for bringing the defendant into court. In *United States* v. *American Lumber Co.*, 80 Fed. 309 affirmed 85 Fed. 827 (C. C. A. 9th), it was held that the statute limiting the time within which suits might be "brought" by the United States to cancel land patents was not complied with by invoking an invalid process, even though done in good faith upon the mistaken assumption that the process was valid. The lower court states, referring to the general rule as to when an action is commenced so as to toll a statute of limitations (p. 316):

> * * * the action, while it may be deemed "commenced" or "brought," so far as the plaintiff is concerned, when the complaint is filed, is not considered "commenced" or "brought" *so far as the defendant is concerned,* so as to stop the running of a statute of limitations, until legal steps have been taken to make him a party by suing out the

> appropriate process and making a *bona fide* effort to serve the same. [Italics ours.]

And, in the opinion of the Circuit Court of Appeals, it is further said (p. 831):

> It does not aid the *bona fides* of the attempt to serve that the appellant's counsel thought that the subpoenas could be legally served by the persons to whom they were sent. It is immaterial what may have been his belief or his opinion in that regard. The *bona fides* must be shown by proof that an effort was made to proceed according to law, and that use was made, or attempted to be made, of the *means which the law prescribes*. [Italics ours.]

See also *Fernekes & Bros.* v. *Case,* 75 Iowa 152; *Jackson* v. *Brooks,* 14 Wend. (N. Y.) 649, 654; *Dorr's Adm'r* v. *Rohr,* 82 Va. 359; *Brock* v. *Francis,* 89 Kans. 463; *Bacigalupo* v. *Superior Court,* 108 Cal. 92; *Town of Woodville* v. *Town of Harrison,* 73 Wis. 360; *Jordan* v. *Bosworth,* 123 Ga. 879; *Maddox* v. *Humphries,* 30 Tex. 494; *Bates* v. *Smith & Bros.,* 80 Tex. 242; *Casey* v. *Newport Rolling Mill Co.,* 156 Ky. 623.

Furthermore, the Tucker Act provides the only procedure for bringing the United States into court. Any conditions attached by Congress to the privilege of suing the United States must be strictly complied with (*Nichols* v. *United States,* 7 Wall. 122, 126; *Schillinger* v. *United States,* 155 U. S. 163, 166; *Price* v. *United States,* 174 U. S. 373; *Eastern*

Transp. Co. v. *United States,* 272 U. S. 675, 686; *United States* v. *Michel,* 282 U. S. 656, 659), and this rule applies to the procedure to be followed (*McElrath* v. *United States,* 102 U. S. 426; *Reid* v. *United States,* 211 U. S. 529, 538), even as to purely formal matters (*Rock Island R. R.* v. *United States,* 254 U. S. 141, 143). Where Congress has prescribed definite rules governing any matter of procedure or practice in the United States courts, such rules are to that extent exclusive of local rules of practice and procedure relating to the same matter which might otherwise be applicable under the Conformity Act. *Southern Pacific Co.* v. *Denton,* 146 U. S. 202, 209, and cases cited therein; *Mexican Central Railway* v. *Pinkney,* 149 U. S. 194, 206; *United States* v. *Lindholm,* 79 F. (2d) 784, 787.

The petitioner further relies upon certain decisions in equity cases as furnishing an even stronger support for his position that the filing of a petition marks the commencement of an action against the United States under the Tucker Act (Br. 15–17). Here, again, however, it would seem that the analogy drawn by the petitioner is not sufficient to compel a decision in its favor. Reliance is placed principally upon the rule as stated in *Mound City Co.* v. *Castleman,* 187 Fed. 921, 925 (C. C. A. 8th), that a suit in equity is commenced by the filing of a petition or bill with the honest intention to prosecute the suit diligently, provided there is no detrimental or unnecessary delay in the subsequent is-

sue or service of the process. It appears from the decisions cited above, however, that, in so far as the defendant is concerned, the good faith of the complaining party is not controlling where an improper process is invoked; and in the decisions relied upon by the plaintiff there is nothing to show that the process of the court was not invoked at the time the petition was filed.

The reason for this rule in equity, as in actions at common law, is that in equity the filing of the bill containing the prayer for issuance of a writ resulted in the issuance of the writ as a matter of course. See *United States* v. *American Lumber Co.*, 85 Fed. 827, 829. The same appears to be true today under the Equity Rules of 1912. *Equitable Life Assur. Soc. of U. S. v. Schwartz*, 42 F. (2d) 646 (C. C. A. 5th), where the court said process "is to be issued by the clerk as of course, whenever a bill is filed." See, also, *United States* v. *Hardy*, 74 F. (2d) 841, 842 (C. C. A. 4th).

That this is the reason for the rule in equity has been pointed out frequently (*Fitch* v. *Smith*, 10 Paige 9; *Pindell* v. *Maydwell*, 46 Ky. 314; *United States* v. *American Lumber Co., supra*), but, in so far as the defendant is concerned, the suing out of process against him marks the commencement of the suit. Cf. *United States* v. *Northern Finance Corporation*, 16 F. (2d) 998 (C. C. A. 2d); *International Paper Co.* v. *Commonwealth*, 232 Mass. 7.

Examination of the other cases cited by petitioner (Br. 16) does not indicate an invariable rule that the filing of the petition in an equity action constitutes commencement of the suit. In most of the cases the statement of the rule is *dictum,* the bill having been filed and process issued prior to the running of the statute. This was the situation in *Lin Timber Co.* v. *United States,* 236 U. S. 574; *Humane Bit Co.* v. *Barnet,* 117 Fed. 316 (N. J.), and *United States* v. *American Lumber Co., supra.* In others, the question involved commencement of the action for jurisdictional purposes rather than for purposes of the statute of limitations. See *Mound City* v. *Castleman,* 187 Fed. 921 (C. C. A. 8th); *Farmers' Loan, &c., Co.* v. *Lake St. Rd. Co.,* 177 U. S. 51. In others, the court stated that issuance of the writ, rather than filing of the bill, marked the commencement of the suit. See *United States* v. *Miller,* 164 Fed. 444 (Ore.); *United States* v. *Northern Finance Corp., supra.*

In the instant case, no action was taken which could amount to process until the copy of the petition was served upon the United States Attorney, and there is no principle to be found in the cases relied upon by petitioner to justify treating the suit as "begun," within the meaning of the statute, until such service was made.

The fact relied upon in the dissenting opinion and by the petitioner (Br. 18–22) that suit is "begun" in the Court of Claims when the petition is filed, and the argument that since the District Court's jurisdiction under the Tucker Act is concurrent with that of the Court of Claims the same rule should apply, are of no force when it is remembered that the statute provides in effect with respect to the Court of Claims that the filing of the petition shall toll the statute of limitations (Revised Statutes, Section 1069), while Sections 5 and 6 of the Tucker Act specifically require with respect to suits in the District Courts not only that a petition shall be filed but that service shall be made upon the United States Attorney and the Attorney General. Furthermore, as the majority opinion noted, the United States is the only party against which a suit may be brought in the Court of Claims, and there was no occasion for service of process upon the Government by the plaintiff in that court, since the Clerk forwards a copy of the petition to the Attorney General, who, with his assistants, is required to appear in that court and defend all cases, while in the District Courts the United States is not the only party against whom suits may be brought, and, accordingly, notice was expressly required.

CONCLUSION

The decision of the court below is correct and shoud be affirmed.

Respectfully submitted.

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MARCH 1938.

APPENDIX

Revised Statutes:

SEC. 3226 [as reenacted by Section 1113 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9]. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of that part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail (U. S. C., Title 26, Section 1672).

Act of March 3, 1887, c. 359, 24 Stat. 505:

SEC. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law. (U. S. C., Title 28, Section 762.)

SEC. 6. That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counter-claim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided,* That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense,

as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court (U. S. C., Title 28, Section 763).

Judicial Code:

SEC. 24. The district courts shall have original jurisdiction as follows:

* * * * *

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department,

or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further,* That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury (U. S. C., Title 28, Section 41 (20)).

Section 24 of the Judicial Code was amended by the Revenue Act of 1921, c. 136, 42 Stat. 227, as follows:

SEC. 1310. (c) Paragraph "Twentieth" of Section 24 of the Judicial Code is amended by adding at the end thereof the following new paragraph: "Concurrent with the

Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds $10,000, if the collector of internal-revenue by whom such tax, penalty, or sum was collected is dead at the time such suit or proceeding is commenced" (U. S. C., Title 28, Section 41).

Judicial Code:

SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: * * * (U. S. C., Title 28, Section 250).

* * * * *

SEC. 156. Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law,

within six years after the claim first accrues: * * * (U. S. C., Title 28, Section 262).

SEC. 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney (U. S. C., Title 28, Section 265).

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